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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-3641

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June 13, 2024

Mr. Sundar Pichai
CEO
Alphabet Inc.
1600 Amphitheater Parkway
Mountain View, CA 94043

Dear Mr. Pichai:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce requests information from Alphabet Inc. (“Alphabet”) relating to the company’s alleged tracking of users of Google Chrome’s Incognito mode.

According to your company, Incognito mode is a private browsing feature of the Google Chrome web browser, which is owned and operated by Alphabet’s subsidiary Google LLC.¹ Google currently advertises Incognito mode as an optional tool that “protects your privacy” and “keeps your browsing private.”² In a May 7, 2019, opinion piece for *The New York Times*, you wrote that Incognito mode is “the popular feature in Chrome that lets you browse the web without linking any activity to you.”³

Recent litigation calls these claims into question. In 2020, lawyers representing millions of Incognito mode users filed a class action lawsuit against Google in the United States District Court for the Northern District of California.⁴ Plaintiffs alleged that Google collected data on users in Incognito mode using “Google Analytics, Google ‘fingerprinting’ techniques, concurrent Google applications and processes on a consumer’s device, and Google’s Ad Manager.”⁵ The plaintiffs further stated that Google Analytics and Google Ad Manager are “designed to

¹ Google Chrome Help, *How Chrome Incognito keeps your browsing private* (last accessed June 11, 2024), <https://support.google.com/chrome/answer/9845881>.

² *Id.*

³ Sundar Pichai, *Google’s Sundar Pichai: Privacy Should Not Be a Luxury Good*, *The New York Times* (May 7, 2019), <https://www.nytimes.com/2019/05/07/opinion/google-sundar-pichai-privacy.html>.

⁴ Jonathan Stempel, *Google settles \$5 billion consumer privacy lawsuit*, *Reuters* (Dec. 29, 2023), <https://www.reuters.com/legal/google-settles-5-billion-consumer-privacy-lawsuit-2023-12-28/>.

⁵ Order Denying Motion to Dismiss at 2, *Brown v. Google*, 525 F. Supp. 3d 1049 (N.D. Cal. 2021) (20-CV-03664), https://www.govinfo.gov/content/pkg/USCOURTS-cand-5_20-cv-03664/pdf/USCOURTS-cand-5_20-cv-03664-0.pdf.

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automatically track users when they visit webpages,” irrespective if the user is on Incognito mode or not.⁶ The presiding judge, Judge Lucy Koh, agreed that Google represented Incognito mode “as a way that users can manage their privacy and omit Google as an entity that can view users’ activity while in private browsing mode,”⁷ that users “might have reasonably concluded that Google does not collect this data from users in private browsing mode,”⁸ and that “Google did not notify users that it would be engaging in the alleged data collection while Plaintiffs were in private browsing mode.”⁹

The litigation also revealed how many Google employees were uncomfortable with advertising Incognito mode as a private browsing option. In a 2018 chat among Google engineers, one employee raised concerns that “we need to stop calling it Incognito [mode]” and cease using a logo which looks like a spy.¹⁰ Another responded by using a reference to the television show *The Simpsons* to mock “the level of privacy [Incognito mode] provides.”¹¹ Additionally, on January 28, 2021, Google’s Chief Marketing Officer Lorraine Twohill sent you an email stating, “we are limited in how strongly we can market Incognito because it’s not truly private, thus requiring really fuzzy, hedging language that is almost more damaging.”

In December 2023, Google chose to settle with the Plaintiffs before the trial, which had been scheduled to begin in February.¹² On April 1, 2024, the settlement details were filed.¹³ Per the settlement, Google agreed to “rewrite its disclosures to inform users that “Google” collects private browsing data... delete and/or remediate billions of data records that reflect class members’ private browsing activities... maintain a change to Incognito mode that enables Incognito users to block third-party cookies by default [for the next five years]...[and] no longer track people’s choice to browse privately.”¹⁴

These revelations come at a time when public trust in Google is dramatically falling.¹⁵ In recent months, Google has faced controversy over the rocky rollout of its AI technology, from the Gemini chatbot producing historically inaccurate AI images to Google’s AI overview

⁶ Complaint at 11, *Brown v. Google*, 525 F. Supp. 3d 1049 (N.D. Cal. 2021) (20-CV-03664), <https://www.classaction.org/media/brown-et-al-v-google-llc-et-al.pdf>

⁷ Order Denying Motion to Dismiss at 16, *Brown v. Google*, 525 F. Supp. 3d 1049 (N.D. Cal. 2021) (20-CV-03664), https://www.govinfo.gov/content/pkg/USCOURTS-cand-5_20-cv-03664/pdf/USCOURTS-cand-5_20-cv-03664-0.pdf.

⁸ *Id.*

⁹ *Id.* at 15

¹⁰ Malathi Nayak, *Google’s ‘Incognito’ Mode Inspires Staff Jokes — and a Big Lawsuit*, Bloomberg (Oct. 11, 2022), <https://www.bloomberg.com/news/articles/2022-10-11/google-s-incognito-inspires-staff-jokes-and-a-big-lawsuit>.

¹¹ *Id.*

¹² Erub Mulvaney, *Google Pledges to Destroy Browsing Data to Settle ‘Incognito’ Lawsuit*, The Wall Street Journal (Apr. 1, 2024), <https://www.wsj.com/tech/google-pledges-to-destroy-browsing-data-to-settle-incognito-lawsuit-1febfde5>.

¹³ *Id.*

¹⁴ Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement at 2, *Brown v. Google*, 525 F. Supp. 3d 1049 (N.D. Cal. 2021) (20-CV-03664), <https://s3.documentcloud.org/documents/24527732/brown-v-google-llc-settlement-agreement.pdf>

¹⁵ Sean Kates, *How Americans’ confidence in technology firms has dropped*, Brookings (June 14, 2023), <https://www.brookings.edu/articles/how-americans-confidence-in-technology-firms-has-dropped-evidence-from-the-second-wave-of-the-american-institutional-confidence-poll/>.

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function advising users to add glue to their pizza.¹⁶ Along with other Big Tech companies, Google has engaged in a race-to-the-bottom for data to train its generative AI models, abusing user trust by leveraging Gmail to train an AI to finish other people's sentences.¹⁷ Moreover, research by Dr. Robert Epstein, Senior Research Psychologist at the American Institute for Behavioral Research and Technology, described Google as having "the power to determine what content billions of people worldwide *will or not see* (emphasis in the original)."¹⁸ Additionally, a recent leak of 2,500 internal Google documents appear to contradict some of Google's previous statements about its search practices and how its algorithm functions.¹⁹

As the Committee of jurisdiction for online consumer data protections, we request Alphabet provide written responses to the following questions regarding Incognito mode no later than June 21, 2024:

1. Was it accurate in 2019 to characterize Incognito mode as allowing users "to browse the web without linking any activity to you."²⁰ Is this statement accurate today?
2. Has Incognito mode changed how much user data is collected between its origination to today? How so?
3. What was your response to your Chief Marketing Officer Lorraine Twohill, when she described Incognito mode as "not truly private?"²¹
4. Does Google plan to change or edit its disclosures on private browsing activities for its Incognito mode? How so? When do you plan to make such change or edit?
5. Will Google delete data records collected from private browsing activities of users who are not class members of the litigation settled in December 2023?

¹⁶ Matt O'Brien, *Google says its AI image-generator would sometimes 'overcompensate' for diversity*, The Associated Press (February 23, 2024), <https://apnews.com/article/google-gemini-ai-chatbot-imagegenerator-race-c7e14de837aa65dd84f6e7ed6cfc4f4b>; Liv McMahon, *Glue pizza and eat rocks: Google AI search errors go viral*, BBC News (May 24, 2024), <https://www.bbc.com/news/articles/cd11gzejgz4o>.

¹⁷ Geoffrey A. Fowler, *Your Instagrams are training AI. There's little you can do about it.*, The Washington Post (September 27, 2023), <https://www.washingtonpost.com/technology/2023/09/08/gmail-instagram-facebook-trains-ai/>.

¹⁸ Testimony of Dr. Robert Epstein, *Google and Censorship through Search Engines: Hearing Before Senate Committee on the Judiciary, Subcommittee on the Constitution*, 116th Cong. (July 16, 2019), <https://www.judiciary.senate.gov/imo/media/doc/Epstein%20Testimony.pdf>

¹⁹ Harshita Das, *A Massive Document Leak Reveals Discrepancies In Google's Search Practices and Hidden Algorithm Secrets*, Outlook (May 31, 2024); <https://www.outlookindia.com/international/us/a-massive-document-leak-reveals-discrepancies-in-googles-search-practices-and-hidden-algorithm-secrets>; see also *Alleged Leaked Files Expose a Dirty Secret*, CyberWire Daily (May 29, 2024); <https://thecyberwire.com/podcasts/daily-podcast/2077/transcript>; See also Kyle Chayka, *Is Google S.E.O. Gaslighting the Internet?* (June 12, 2024); https://www.newyorker.com/culture/infinite-scroll/is-google-seo-gaslighting-the-internet?utm_medium=social&utm_source=twitter&mbid=social_twitter&utm_brand=tny&utm_social-type=owned

²⁰ Sundar Pichai, *Google's Sundar Pichai: Privacy Should Not Be a Luxury Good*, The New York Times (May 7, 2019), <https://www.nytimes.com/2019/05/07/opinion/google-sundar-pichai-privacy.html>.

²¹ Malathi Nayak, *Google's 'Incognito' Mode Inspires Staff Jokes — and a Big Lawsuit*, Bloomberg (Oct. 11, 2022), <https://www.bloomberg.com/news/articles/2022-10-11/google-s-incognito-inspires-staff-jokes-and-a-big-lawsuit>.

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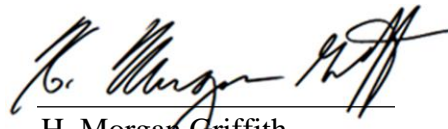
6. The terms of the settlement state that Google will “maintain a change to Incognito mode that enables Incognito users to block third-party cookies by default” for the next five years. Will Google keep this change in place after five years? If not, why?
7. Does Google plan to change the Incognito mode name and logo to reflect the actual approach to online privacy and anonymity the browsing feature offers?

The Committee appreciates your cooperation with this request. Should you have any questions, please contact the Majority Committee staff at (202) 225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
Energy and Commerce Committee



H. Morgan Griffith
Chair
Subcommittee on Oversight
and Investigations



Bob Latta
Chair
Subcommittee on Communications
and Technology



Gus Bilirakis
Chair
Subcommittee on Innovation, Data,
and Commerce

CC: Federal Trade Commission